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TRANSCRIPT OF PROCEEDINGS

JUL 1 2 1994

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

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IN THE MATTER OF:

MM DOCKET NO. 94-10

Clayton, Missouri

24 DATE OF HEARING: June 20, 1994

VOLUME: 2

25 PLACE OF HEARING: Washington, D. C.

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JUL 12 1994

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

-----)  
In Re Application of: )

THE LUTHERAN CHURCH/MISSOURI SYNOD )

MM Docket No. 94-10

For Renewal of Licenses of )  
Stations KFUD/KFUD-FM )  
Clayton, Missouri )  
-----)

The above-entitled matter came on for hearing pursuant to  
Notice before Judge Arthur I. Steinberg, Administrative Law  
Judge, at 2000 L Street, N.W., Suite 201, Washington, D.C.,  
20554, in Courtroom Number Three, on Monday, June 20, 1994, at  
9:00 a.m.

APPEARANCES:

On behalf of The Lutheran Church:

KATHRYN SCHMELTZER, Esquire  
BARRY H. GOTTFRIED, Esquire  
Fisher, Wayland, Cooper, Leader & Zaragoza  
2001 Pennsylvania Avenue, N. W., Suite 400  
Washington, D. C. 20006-1851

On behalf of NAACP:

DAVID E. HONIG, Esquire  
1800 N.W. 187th Street  
Miami, Florida 33056

On behalf of Mass Media Bureau:

ROBERT A. ZAUNER, Esquire  
Y. PAULETTE LADEN, Esquire  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, N. W., Suite 7212  
Washington, D. C. 20554

## I N D E X

<u>Witness</u>	<u>Voir Dire</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Thomas M. Lauher					
By Ms. Schmeltzer		103			
By Mr. Honig	104,108		121		
By Mr. Zauner			134		
Examination by Judge:	106,200				
Peter James Cleary					
By Ms. Schmeltzer		206		229	
By Mr. Honig	207		209		
By Ms. Laden			225		

E X H I B I T S

	<u>Identified</u>	<u>Received</u>	<u>Rejected</u>
<u>Lutheran Church</u>			
Exhibit No. 5	206	208	
Exhibit No. 6	103	120	
<u>Judge's</u>			
Exhibit No. 1	244	245	

1	<u>E X H I B I T S</u>		
2	Continued		
3		<u>Identified</u>	<u>Received</u> <u>Rejected</u>
4	<u>Mass Media Bureau</u>		
5	Exhibit No. 1	244	250
	Exhibit No. 2	244	250
6	Exhibit No. 3	244	250
	Exhibit No. 4	244	250
7	Exhibit No. 5	244	250
	Exhibit No. 6	244	250
8	Exhibit No. 7	244	250
	Exhibit No. 8	244	250
9	Exhibit No. 9	244	250
	Exhibit No. 10	244	250
10	Exhibit No. 11	244	250
	Exhibit No. 12	244	250
11	Exhibit No. 13	244	250
	Exhibit No. 14	244	250
12	Exhibit No. 15	244	250
	Exhibit No. 16	244	
13	Exhibit No. 17	244	250
	Exhibit No. 18	244	
14	Exhibit No. 19	244	
	Exhibit No. 20	244	250
15	Exhibit No. 21	244	250
	Exhibit No. 22	244	250
16	Exhibit No. 23	244	250
	Exhibit No. 24	244	250
17	Exhibit No. 25	155	157
18			
19			
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23			
24	Hearing Began: 9:33 a.m.	Hearing Ended: 3:41 p.m.	
25	Lunch Began: 1:23 p.m.	Lunch Ended: 2:17 p.m.	

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## P R O C E E D I N G S

1 JUDGE STEINBERG: This is the commencement of the  
2 hearing in MM Docket No. 94-10 involving the applications of  
3 The Lutheran Church/Missouri Synod for renewal of licenses of  
4 Stations KFUE-FM -- excuse me -- AM and KFUE-FM in Clayton,  
5 Missouri. The Commission designated these hearings on  
6 February -- designated this case for hearing on February 1,  
7 1994, on EEO, EEO issues and alleged misrepresentation/lack of  
8 candor issues.

9 Let me get the appearances of counsel for The  
10 Lutheran Church/Missouri Synod.

11 MS. SCHMELTZER: Kathryn R. Schmeltzer and Barry H.  
12 Gottfried of the firm Fisher, Wayland, Cooper, Leader and  
13 Zaragoza.

14 MR. GOTTFRIED: Good morning, Your Honor.

15 JUDGE STEINBERG: Good morning. For The Missouri  
16 State Conference of Branches of the NAACP, St. Louis Branch of  
17 the NAACP, and the St. Louis County Branch of the NAACP?

18 MR. HONIG: David Honig, Your Honor.

19 JUDGE STEINBERG: And for the Chief, Mass Media  
20 Bureau?

21 MR. ZAUNER: Robert A. Zauner and Paulette Laden.

22 JUDGE STEINBERG: Mr. Honig indicated that he had a  
23 preliminary matter that he wanted to discuss before we took  
24 the testimony of the witnesses.  
25

1           MR. HONIG: I do, Your Honor, and inasmuch as it  
2 involves, among other things, a financial matter, I'd like to  
3 ask if all the witnesses or potential witnesses could be  
4 excused for a few minutes.

5           JUDGE STEINBERG: Any, any objection?

6           MS. SCHMELTZER: Not at the moment. I do want to  
7 get into the aspect of our having a representative of the  
8 Church present for this proceeding, but I'll be happy to do  
9 that after Mr. Honig.

10          JUDGE STEINBERG: Okay. No, you -- so, anybody who  
11 is going to be a witness either go wait in the hall or the  
12 witness room until somebody comes and gets you. Okay. We can  
13 go off the record.

14                   (Off the record.)

15                   (On the record.)

16          JUDGE STEINBERG: Mr. Honig?

17          MR. HONIG: How do I start? Judge, having tried a  
18 case before you and, and lost it, one thing that I know is  
19 that you enjoy harmony among the lawyers and you enjoy having  
20 an opportunity to obtain the spontaneous impressions of wit-  
21 nesses to questions that they don't anticipate in order to  
22 observe their demeanor. Your Honor, with great regret I have  
23 to tell you that you may not have the benefit of either of  
24 those conditions in this trial, especially the second one. I  
25 have to report to you that through trickery my attorney work

1 product embedded within containing virtually my entire trial  
2 strategy has been stolen. Now, let me tell you how this  
3 happened.

4 I also have a Motion to Enlarge and for Injunctive  
5 Relief on the subject which is rather thick, so I will take a  
6 few minutes and summarize it first. Some of the motion I'm  
7 asking you to rule today on before the witnesses return.  
8 Others of it, of course, will be the subject necessarily of  
9 the usual procedures for Motions to Enlarge. I will also want  
10 to address another aspect of the motion, which is the inter-  
11 ference with one of our witnesses.

12 Judge, because I realized that this was going to be  
13 a very contentious case, I hired a law clerk, a third-year  
14 student at the University of -- at St. Louis University Law  
15 School. His name was Michael Blanton. Mr. Blanton's sworn  
16 Declaration of last night is attached to this motion.

17 MR. ZAUNER: Your, Your Honor, are we on the record  
18 now?

19 JUDGE STEINBERG: Yeah.

20 MR. ZAUNER: Thank you.

21 MR. HONIG: Let me recount for you what Mr.  
22 Blanton's Declaration says. One of the -- as, as we got into  
23 discovery, it was very clear to us that there was one particu-  
24 lar witness that was going to be especially valuable to us if  
25 we could get him to testify for the NAACP, and that witness is

1 the lead witness for the Church this morning, Mr. Tom Lauher.  
2 Mr. Lauher was of great interest to us because while he was  
3 General Manager of KFUE-FM he generated two lengthy memoranda,  
4 both in May 1989. One memorandum identified several aspects  
5 of the EEO procedures which we felt the station had not com-  
6 plied with. Other --

7 JUDGE STEINBERG: Let me just -- you're talking  
8 about the KFUE Proposed Exhibit 7, Attachment 5, and Proposed  
9 Exhibit 7, Attachment 6, just so that the record is clear.

10 MR. HONIG: That, that sounds familiar. I think  
11 there is a --

12 JUDGE STEINBERG: It's --

13 MR. HONIG: I think there's a --

14 JUDGE STEINBERG: -- the March 15, '89 memo and the  
15 May 9, '89 memo.

16 MR. HONIG: Yeah.

17 JUDGE STEINBERG: Excuse me, March 9th.

18 MR. HONIG: I'm not sure the attachment numbers are  
19 right, but that sounds correct.

20 JUDGE STEINBERG: Yeah.

21 MR. HONIG: So, you're, you're familiar with them.  
22 They are essentially the smoking guns in this case. And the  
23 -- if, if I -- I hope the Bureau won't be hurt to say that  
24 they recognized also that this was going to be an important  
25 witness. Since I had a clerk in St. Louis, I volunteered



1 both, you know, for us and then also to see if he would --  
2 wanted -- didn't want to talk to us would talk to the Bureau,  
3 to find him, and we did find him.

4           Mr. Blanton called Mr. Lauher in, I think it was,  
5 around May 15th or so, I may have the date slightly wrong, and  
6 told him we, we want you to be a witness for the NAACP, will  
7 you meet with us so I can do a witness declaration for you for  
8 the NAACP. Mr. Lauher agreed to do that and insisted, how-  
9 ever, that it occur at a neutral location. He didn't want Mr.  
10 Blanton to come to his apartment. He didn't want Mr., he  
11 didn't want Mr. Blanton to come to his apartment. So, they  
12 went to the -- to a room associated with the library of the  
13 St. Louis University School of Law.

14           And, and they had their meeting that -- in the  
15 evening of May 21st, if I'm recalling correctly, and during  
16 that meeting Mr. Blanton asked Mr. Lauher 20 questions which I  
17 had provided to Mr. Blanton. Those included a number of  
18 questions which were not asked of any witness in the deposi-  
19 tions because the deposition questions that I had asked in-  
20 tended to basically get a who, what, when, and where, and  
21 these questions got a why. These questions had embedded  
22 within them basically what I was going to be asking at the  
23 trial, essentially my theory of the case, which is a matter  
24 that up to that point was unknown to KFUD.

25           Mr. Lauher at the outset asked if he could tape

1 record the interview. When Mr. Blanton later told me that I  
2 thought that was unusual, because of all the hundreds of  
3 witnesses that I've ever had to supervisor interviews of no  
4 one had ever before asked to tape record an interview. But  
5 nonetheless I didn't see anything wrong with it in hindsight  
6 because I know sometimes tape recordings are important. I had  
7 asked Mr. Blanton not to tape interviews because some of the  
8 witnesses get scared by a tape recorder. But I thought well,  
9 maybe the witness, you know, is scared and it's a legal pro-  
10 ceeding, he's not a lawyer. You know, I didn't think anything  
11 of it at the time.

12           Then on June 1st in the evening I received a copy  
13 of KFUD's exhibits and was quite astounded to discover that  
14 Mr. Lauher was their witness, and I was even more astounded to  
15 discover that in fact two days before Mr. Lauher met with Mr.  
16 Blanton Mr. Lauher had become their witness. That was the  
17 date of his Declaration. I think the dates were that May 21st  
18 Mr. Lauher signed his Declaration for the Church. On May 23rd  
19 he interviewed in the guise of being a potential NAACP wit-  
20 ness, which of course was a fraud because he is already the  
21 agent of that Party, KFUD.

22           MS. SCHMELTZER: May I respond to this for --

23           MR. HONIG: May I please finish.

24           JUDGE STEINBERG: Let Mr. Honig finish.

25           MR. HONIG: Now, what this does, Your Honor, is it,

1 | it puts us in a difficult position in four respects. The  
2 | first, I have, knowing what the questions were and knowing the  
3 | witnesses answers, Mr. Blanton sent me back his answers and I,  
4 | I should say that after Mr. Blanton faxed me a long note the  
5 | next day with the questions and the answers, I came to the  
6 | conclusion that Mr. Lauher wouldn't be a particularly useful  
7 | witness for us and I told Mr. Zauner that and we never pursued  
8 | Mr. Lauher again, but certainly I had no inkling that he had  
9 | already agreed to be the other side's witness. So, the pos-  
10 | ture that this puts me in is one of great difficulty, because  
11 | I'm used to a fair fight. I'm not used to a fight with my, my  
12 | theory already out there. First, Ms. -- I, I looked at the  
13 | testimony of all the other witnesses to see whether any of  
14 | these matters which could not have been known except through  
15 | these tapes had found their way into the other testimony.

16 | JUDGE STEINBERG: Let me, let me just observe.  
17 | According -- just let me get the chronology. Mr. Lauher's  
18 | Declaration was signed before Mr. Blanton spoke with him,  
19 | right?

20 | MR. HONIG: It was -- that's right.

21 | JUDGE STEINBERG: Okay. So, then Mr. Blanton spoke  
22 | with him. He -- Mr. Lauher tape recorded the conversation --

23 | MR. HONIG: And then the --

24 | JUDGE STEINBERG: -- and somehow KFUD got your  
25 | whole theory of the case. But how, how could that help them

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1 | if their exhibits were already done?

2 |           MR. HONIG: No. The answer was that that was the  
3 | only exhibit which was already done.

4 |           JUDGE STEINBERG: Okay.

5 |           MR. HONIG: Only Mr. Lauher's Declaration was dated  
6 | before that interview. The earliest of the other seven  
7 | Declarations was dated May 27th and the last was dated June  
8 | 1st.

9 |           JUDGE STEINBERG: Okay.

10 |           MR. HONIG: The interview with Mr. Blanton was May  
11 | 23rd, and so there was at least four days.

12 |           JUDGE STEINBERG: Okay. Well, here's -- okay.  
13 | Right. I, I just checked his Declaration. It was dated and  
14 | signed May 21.

15 |           MR. HONIG: Now, I looked at the other Declarations  
16 | and I wanted to sort of assess the state of the damage. It's  
17 | clear to me that Mr. Stortz's Declaration and Reverend  
18 | Devantier's Declaration contained the fruits of that tape  
19 | recording.

20 |           It's clear to me that Ms. Zika's Declaration does  
21 | not, because it dealt with completely different subjects and  
22 | so forth. I will have no difficulty cross-examining Ms. Zika.  
23 | It's also clear to me that Ms. Cranberg's Declaration does  
24 | not. It looked like she wrote it herself. It tracked her  
25 | deposition. It doesn't seem to have a clue as to what

1 | happened there. So, I, I would not feel uncomfortable cross-  
2 | examining Ms. Cranberg.

3 |           I am not sure, however, whether the other three  
4 | witnesses, which are Mr. -- I believe it's Mr. Clancy,  
5 | Reverend Cleary, and Reverend Bohlman had any access to this  
6 | material, either in deciding what to include or what not to  
7 | include. I just don't know. Nor do I know whether counsel  
8 | had all this, but I'd like to speak to that briefly.

9 |           This is a case in which all counsel for both sides  
10 | certainly, because it was a contentious case, I think made it  
11 | their job to know what their clients were, were doing. And I,  
12 | I hope that what seems to have happened didn't happen and --  
13 | but in great sadness I have to report that I'm virtually  
14 | certain that it did. I believe that it would be very un-  
15 | likely, indeed, virtually improbable, that Mr. Lauher would --  
16 | or Mr. Stortz would not have called counsel before Mr. Lauher  
17 | went to meet with a representative of the NAACP after he  
18 | became a witness in their control.

19 |           Even in the event that that contact didn't happen,  
20 | we're dealing with very experienced counsel who knew or should  
21 | have known that stuff coming from the Church was matters that  
22 | the Church couldn't possibly have known unless the confidenti-  
23 | ality of my work product had been invaded.

24 |           And -- but that, but that is but one of the  
25 | difficulties I face. The other -- there really are four.

1 That is one. The, the knowledge of these other witnesses, the  
2 others -- and of course Mr. Lauher himself. It's futile for  
3 me to cross-examine him. What could I possibly ask Mr.  
4 Lauher? He already knows everything I'm going to ask him.  
5 So, in cross-examining him his genuine and faithful impres-  
6 sions to questions he's hearing for the first time can't  
7 possibly emerge. And, therefore, Your Honor, as to this  
8 issue, and then if I could briefly I'd like to speak with the  
9 question --

10 JUDGE STEINBERG: Let's do -- why don't we do one  
11 -- have you finished with this part?

12 MR. HONIG: There are, there are five requests I'd  
13 like to make and --

14 JUDGE STEINBERG: Okay. That's -- and this one --  
15 number one?

16 MR. HONIG: And this is, this is, this is the first  
17 problem in the matter of the interference with one of my  
18 witnesses.

19 JUDGE STEINBERG: Okay. Are you finished --

20 MR. HONIG: I've turned to the second.

21 JUDGE STEINBERG: -- with number one --

22 MR. HONIG: No.

23 JUDGE STEINBERG: -- Mr. Lauher?

24 MR. HONIG: No, I'm not. I would like to, to make  
25 five specific requests for relief.

1 MR. GOTTFRIED: Your Honor, just so --  
2 JUDGE STEINBERG: Wait.  
3 MR. GOTTFRIED: -- the Court is aware, we have a  
4 witness -- we have two witnesses who can only be here today.  
5 Is Mr. Honig --  
6 JUDGE STEINBERG: Is this Mr. Cleary?  
7 MS. SCHMELTZER: Mr. Lauher and -- no.  
8 MR. GOTTFRIED: No. No, I don't think so.  
9 MS. SCHMELTZER: I don't know who that is.  
10 MR. GOTTFRIED: If, if this takes up the whole  
11 morning, we either are going to have to go the whole night  
12 or --  
13 JUDGE STEINBERG: We're not going to go all night.  
14 MR. GOTTFRIED: Well, they cannot be here tomorrow,  
15 Your Honor.  
16 MR. HONIG: May I inquire who the gentleman is?  
17 JUDGE STEINBERG: Sure, you may inquire.  
18 MR. HONIG: Well --  
19 JUDGE STEINBERG: You're not going to be a witness?  
20 MR. HONIG: What's your name, sir?  
21 OBSERVER #1: Mr. Bach (phonetic sp.).  
22 MR. HONIG: Mr. Bach? And, and you represent  
23 (indiscernible).  
24 JUDGE STEINBERG: Okay.  
25 MR. HONIG: Okay.

1 JUDGE STEINBERG: So, are we finished -- the -- I,  
2 I'd like to do these -- this one at a time before it gets too  
3 confusing and nobody remembers what happened. So, are we  
4 finished with Mr. Lauher?

5 MR. HONIG: No. I, I'd like to make five specific  
6 requests for relief --

7 JUDGE STEINBERG: With respect to --

8 MR. HONIG: If it would be quicker, by the way, I  
9 do, I do have a written motion with Declarations and the  
10 Declarations of my witnesses, and perhaps I should distribute  
11 that. It might --

12 JUDGE STEINBERG: Well --

13 MR. HONIG: -- be easier to follow.

14 JUDGE STEINBERG: My feeling on the Petition to  
15 Enlarge Issues is you file it. Your opponents get an opportu-  
16 nity to respond and you reply and I rule. I don't like to do  
17 things in -- orally in a hearing. The Rules don't provide for  
18 that. And I think that, that KFUE -- these, these are obvi-  
19 ously very serious allegations and they should have an oppor-  
20 tunity to respond.

21 MR. HONIG: Judge, I had considered the possibility  
22 of, of filing an Ex Parte Motion for a Temporary Restraining  
23 Order, but I thought in the interests of time, since we're all  
24 here, I would --

25 JUDGE STEINBERG: What do you want to restrain --



1 MR. HONIG: -- do it here. Let me explain. First,  
2 fortunately, perhaps, Mr. Lauher is the first witness. And  
3 I'm very concerned when there has, has been what I consider to  
4 be a theft. The witness will take the stand and it will put  
5 me in an impossible position as the person who's material was  
6 taken to have to --

7 JUDGE STEINBERG: Well, let me --

8 MR. HONIG: -- cross-examine him.

9 JUDGE STEINBERG: -- let me just, let me just --  
10 there have been serious allegations. I think it's time to  
11 have Ms. Schmeltzer respond and have the Bureau comment. Ms.  
12 Schmeltzer?

13 MS. SCHMELTZER: Yes. Your Honor --

14 JUDGE STEINBERG: Just on, on this matter.

15 MS. SCHMELTZER: Yes. On the question of Mr.  
16 Lauher, after this case was designated for hearing we started  
17 interviewing a number of people, including people who still  
18 worked at KFUD and people who formerly worked at KFUD. We  
19 interviewed Mr. Lauher at an early opportunity on the phone.  
20 We had some follow-up calls. It became clear to us that he  
21 might be a relevant witness, but we weren't sure whether we  
22 needed him or not, but we were in contact with him. On the  
23 date that Mr. Lauher signed his Declaration, Mr. Gottfried and  
24 I were in St. Louis. We met with him in person. We went over  
25 what would be in his -- we, we worked on his Declaration right

1 in front of him. He wrote it out. It was typed up. He  
2 signed it. We told Mr. Lauher, both on that occasion and  
3 during our earlier telephone discussions, that he might re-  
4 ceive calls from the Mass Media Bureau and from the NAACP and  
5 he was not within our control. He was free to talk to them if  
6 he desired. It was totally up to him. He could do what he  
7 desired as far as talking to the Bureau and talking to the  
8 NAACP.

9 I had no idea that Mr. Lauher talked to the NAACP  
10 until after the fact. Sometime after the fact he said: by  
11 the way, I talked to the NAACP. I believe he also talked to  
12 Mr. Zauner at some point in time. After --

13 JUDGE STEINBERG: Okay, Mr. Zauner here is nodding  
14 his head and --

15 MR. ZAUNER: Yeah. I, I did. I had an interview  
16 with Tom Lauher on June 7, 1994.

17 JUDGE STEINBERG: On the telephone?

18 MR. ZAUNER: By telephone.

19 MS. SCHMELTZER: So, we did not send him to the  
20 NAACP to learn any privileged information. He decided on his  
21 own to have the discussion with the NAACP representative. I  
22 think he was trying to be open about his knowledge. After the  
23 fact he said: by the way, I taped the interview. I -- we did  
24 not see Mr. Lauher again until late last night. He didn't  
25 arrive in Washington until 9:30 p.m. At that time Mr.

1 Gottfried and I met with him briefly. At that time he gave us  
2 a transcript of the tape. I have copies of it, Your Honor.  
3 It didn't reveal to me at all what the NAACP's theory was. I  
4 still don't know what the NAACP's theory of this case is.  
5 I'll be happy to make the transcript available. I don't think  
6 it shows anything.

7 MR. GOTTFRIED: Your Honor, if I could just might  
8 add briefly, I don't understand -- Mr. Honig apparently, at  
9 least if he's telling the truth, told his theory of the case  
10 to a third party witness and believes that that was somehow  
11 confidential work product. That witness was free to do with  
12 that information anything he wanted. He could have plastered  
13 it on the walls of his -- in the middle of St. Louis. There's  
14 no work product issue here.

15 JUDGE STEINBERG: Let, let me have -- are you, are  
16 you finished?

17 MR. GOTTFRIED: Thank you.

18 JUDGE STEINBERG: Let me hear from the Bureau and  
19 then Mr. Honig.

20 MR. ZAUNER: I agree with the Church's position  
21 entirely. I, I think Mr. Honig took a risk when we had a  
22 third-year law student conduct the interview. I interviewed  
23 Tom Lauher as I -- Lauher, as I said, on June 7, 1994. And  
24 one of the first notes that I made, and I, I hope I'm not --  
25 my notes include some of my mental impressions, was very

1 | defensive of the Church. And I'll tell you, after that I was  
2 | -- I ascertained that that was his outlook, I was a little --  
3 | it, it framed the way I asked him questions and what questions  
4 | I asked him. Now, as a lawyer that's our job, is to get  
5 | information and, and where necessary to protect our case. If,  
6 | if Mr. Honig wrote out 20 questions and asked a law student to  
7 | ask them without using any judgment as to what he might be  
8 | revealing to the witness based upon the witness's demeanor in  
9 | answering the questions, then he suffers the consequences. I  
10 | don't find that anybody here has done anything wrong.

11 | JUDGE STEINBERG: Mr. Honig?

12 | MR. HONIG: I am absolutely appalled to hear this.  
13 | I'm -- I really am, Your Honor. I'm, I'm, I'm astounded.  
14 | We've just heard an Officer of this Court tell the Court that  
15 | last night she obtained my trial strategy, read it --

16 | JUDGE STEINBERG: Wait --

17 | MR. HONIG: -- didn't tell me --

18 | JUDGE STEINBERG: She said she obtained a tran-  
19 | script of the interview with Mr. Lauher. Whether that con-  
20 | tained your trial strategy or not is --

21 | MR. HONIG: Well, Judge --

22 | JUDGE STEINBERG: You know, that's what you think  
23 | it did --

24 | MR. HONIG: It did.

25 | JUDGE STEINBERG: -- but, but, but she testified as

1 to what, as to what she obtained. So, let's restrict it to  
2 that. Call it the transcript of the Lauher interview. Now, I  
3 think we're -- this is a very important matter, obviously, but  
4 time is, is, is running and why don't you, you make your --  
5 you said you have five requests for relief?

6 MR. HONIG: Yes.

7 JUDGE STEINBERG: Okay. So, let's get to that.  
8 Okay. You're obviously going to file a Petition to Enlarge  
9 Issues.

10 MR. HONIG: It's right here.

11 JUDGE STEINBERG: Okay.

12 MR. HONIG: May I first respond to the suggestion  
13 that it's somehow my fault that this material was taken. I  
14 shouldn't have --

15 MR. ZAUNER: No.

16 MR. HONIG: -- trusted --

17 MR. ZAUNER: The Judge --

18 JUDGE STEINBERG: Wait, wait.

19 MR. ZAUNER: I thought Your Honor asked him to make  
20 his five requests. I'd like to hear them.

21 JUDGE STEINBERG: Please. Please make your five  
22 requests. I mean, in terms of attorney-client work product,  
23 et cetera, et cetera, I'm not going to hack it out here. We  
24 can do that if the, if the issue is raised. But it, it, it  
25 seems to me that if, if you have a letter that's -- you know,

1 memo to self, this is my theory of the case and you give it to  
2 a third party and that third party gives it to a fourth party,  
3 the confident-- the confidentiality is breached.

4 MR. HONIG: Judge, that's not true --

5 JUDGE STEINBERG: But, but that's --

6 MR. HONIG: That's not --

7 JUDGE STEINBERG: -- but that's a matter, that's a  
8 matter we can argue later --

9 MR. HONIG: If, if I may in one --

10 JUDGE STEINBERG: -- in terms of --

11 MR. HONIG: -- sentence --

12 JUDGE STEINBERG: -- case --

13 MR. HONIG: -- in one sentence, not when the wit-  
14 ness has come to us under false pretenses and led us to be-  
15 lieve that he was --

16 JUDGE STEINBERG: Well --

17 MR. HONIG: -- going to be our witness. We have to  
18 share these things with our witnesses. He didn't -- he is  
19 under a duty --

20 JUDGE STEINBERG: Wait --

21 MR. HONIG: -- to tell us that he was already --

22 MR. GOTTFRIED: Your Honor, I will --

23 JUDGE STEINBERG: Wait a minute. Wait, wait.

24 MR. GOTTFRIED: -- under oath --

25 JUDGE STEINBERG: I think we --

1 MR. GOTTFRIED: -- we will swear that we were never  
2 told -- that Mr. Lauher came to us and agreed to talk to us.  
3 What he had told Mr. Honig he never told us, we didn't know.  
4 The first we're hearing -- today, Mr. Lauher's business, Your  
5 Honor.

6 JUDGE STEINBERG: Okay. Let's --

7 MR. ZAUNER: The five --

8 JUDGE STEINBERG: Yeah, let's get to the requests.

9 MR. HONIG: Your Honor, first, it's clear that Mr.  
10 Lauher doesn't have much respect for me.

11 MR. ZAUNER: Objection, Your Honor.

12 MR. HONIG: I -- may I, may I --

13 MR. ZAUNER: Will we get to the requests? I don't  
14 want his --

15 MR. HONIG: I'm making, I'm making a request. I'm  
16 making a request. And therefore it's impossible for me to  
17 conduct a voir dire of this witness, because I'm in the awk-  
18 ward position of in effect being a homeowner whose house has  
19 been invaded and I just happen to be a prosecutor and there I  
20 am in court with, with trying that case. So, Your Honor, I  
21 would like to hope that the witness respects you and I would  
22 like to ask if you would do a voir dire of him to find out  
23 what he knew, who he told, when he told what, and, and whether  
24 he was truly acting on his own or within the Church he might  
25 have shared this information with.

1 Second, I would like --

2 JUDGE STEINBERG: Okay. The first request. Let's  
3 take them one at a time.

4 MR. HONIG: Okay.

5 JUDGE STEINBERG: Ms. Schmeltzer?

6 MS. SCHMELTZER: It seems to me that Mr. Honig is  
7 assuming that his Petition to Enlarge Issues is going to be  
8 granted. I think that's totally inappropriate at this point  
9 in time.

10 JUDGE STEINBERG: Mr. Zauner?

11 MR. ZAUNER: I've heard no basis for a grant of  
12 such request.

13 JUDGE STEINBERG: Okay. The request is denied.  
14 You, you voir dire him as you see fit. That's your job.

15 MR. HONIG: Second, I'd like all witnesses and  
16 counsel sequestered and I'd like counsel to testify under oath  
17 about what they knew. I think that what we've heard already  
18 is that counsel, at least as of last night, knew that they had  
19 material that was improperly in their possession and didn't  
20 tell me, and they had my home number.

21 JUDGE STEINBERG: Ms. Schmeltzer?

22 MS. SCHMELTZER: I had no idea. I, I -- there,  
23 there's nothing in, in --

24 JUDGE STEINBERG: Well, first, sequestration.

25 MS. SCHMELTZER: The terms of sequestration of, of



1 all witnesses? Well, we -- a representative of the Church in  
2 this --

3 JUDGE STEINBERG: Okay.

4 MS. SCHMELTZER: -- proceeding.

5 JUDGE STEINBERG: Which rules?

6 MS. SCHMELTZER: And that would be Reverend Paul  
7 Devantier.

8 JUDGE STEINBERG: Sequestration?

9 MS. SCHMELTZER: The rest of the witnesses --

10 MR. ZAUNER: I, I see --

11 MS. SCHMELTZER: -- we're willing to sequester.

12 MR. ZAUNER: -- no basis for a grant of a seques-  
13 tration order as requested.

14 JUDGE STEINBERG: Okay. The witnesses will be  
15 sequestered except for one representative.

16 MR. HONIG: And lawyers?

17 JUDGE STEINBERG: Not lawyer. Any, any person that  
18 they want from the Church.

19 MR. HONIG: Well, a lot of the requests related to  
20 the lawyers.

21 JUDGE STEINBERG: Right. That --

22 MR. HONIG: I'm going, I'm going --

23 JUDGE STEINBERG: We haven't gotten to that one  
24 yet.

25 MR. HONIG: Okay.